

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
Article 27.--STATE HISTORICAL SOCIETY

75-2741. Title of act. K.S.A. 75-2741 through 75-2754 of this act shall be known and may be cited as the Kansas unmarked burial sites preservation act.

History: L. 1989, ch. 234, § 1; July 1.

75-2742. Legislative findings; purpose of act. (a) The legislature finds that:

- (1) Existing state laws do not provide adequate protection for unmarked burial sites and human skeletal remains; and
- (2) there is no procedure regarding the treatment and disposition of human skeletal remains from unmarked burial sites necessary to protect the interests of descendants or other interested persons.

(b) The purposes of this act are to:

- (1) Provide adequate protection for unmarked burial sites and human skeletal remains located on all lands within the state of Kansas;
- (2) prohibit unauthorized disturbance of any unmarked burial sites; and
- (3) provide procedures for the proper care and protection of unmarked burial sites and human skeletal remains found in the state of Kansas.

History: L. 1989, ch. 234, § 2; July 1.

75-2743. Definitions. As used in this act:

- (a) "Board" means the unmarked burial sites preservation board.
- (b) "Evaluation" means assessment by the state historical society of the nature of human skeletal remains and goods interred with such remains and the situation in which they are located to make recommendations for action and disposition of the remains or goods under this act.
- (c) "Human skeletal remains" means any part of the body of a deceased human being, in any stage of decomposition.
- (d) "Person" means an individual, unincorporated association, partnership, limited partnership, corporation or governmental entity.
- (e) "Society action" means any evaluation, investigation, disinterment, study, reinterment or other disposition carried out by the state historical society, with board approval, using moneys appropriated to the state historical society.
- (f) "Unmarked burial site" means any interment by whatever means of human skeletal remains, other than a burial site in a cemetery otherwise protected by Kansas statute.

History: L. 1989, ch. 234, § 3; July 1.

75-2744. Board; administration, composition, terms, compensation, expenses, offices. (a) There is hereby created the unmarked burial sites preservation board. The board shall be attached to the state historical society. All budgeting, purchasing and related management functions shall be administered under the direction of the secretary of the state historical society. All vouchers for expenditures of the board shall be approved by the

secretary of the state historical society.

(b) The board shall consist of:

(1) The state archeologist;

(2) a physical anthropologist, appointed by the governor, who is employed by an institution of higher education located in this state, holds a doctorate degree representing specialized training in skeletal biology or forensic osteology and has demonstrated ability to design and execute a human skeletal analysis and to present the written results and interpretations of the analysis in a thorough, scientific and timely manner;

(3) a historian, appointed by the governor, who is employed by the state historical society or an institution of higher education located in this state, holds an advanced degree in American history and has specialized in Kansas history;

(4) four tribal representatives, one from each of the four resident Kansas Indian tribes (Pottawatomie, Kickapoo, Iowa and Sac and Fox), to be selected by the governing body of the respective tribe; and

(5) two members, appointed by the governor, who represent the general public but are not members of the interest groups represented by the members enumerated in subsections (a)(2) through (4).

(c) Of the appointive members first appointed to the board: The member who is a physical anthropologist and the member who represents the Pottawatomie tribe shall serve for terms of one year; the member who is a historian, the member representing the Kickapoo tribe and one member of the general public, as designated by the governor, shall serve for terms of two years; and the member who represents the Iowa tribe, the member who represents the Sac and Fox tribe and one member of the general public, as designated by the governor, shall serve for terms of three years. Upon expiration of such terms, all members shall serve for terms of three years.

(d) Appointive members of the board attending meetings of the board or a subcommittee meeting authorized by the board shall be paid compensation and subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223 and amendments thereto.

(e) The state archeologist shall serve as chairperson of the board.

(f) The secretary of the state historical society shall serve as secretary of the board and shall provide such office space and such staff as necessary for the performance of the duties prescribed by this act.

History: L. 1989, ch. 234, § 4; July 1.

75-2745. Same; powers and duties. The board shall have the power and duty to:

(a) Provide for the establishment and maintenance of a registry of unmarked burial sites located in this state;

(b) consult with all interested parties on occasions of disturbance, or threatened or potential disturbance, of unmarked burial sites to determine a proper course of action;

(c) initiate necessary action by the attorney general for the enforcement of this act;

(d) issue permits for the excavation, study, display and reinterment or disposition of human skeletal remains from unmarked burial sites and goods interred with such remains, as provided in this act; and

(e) adopt such rules and regulations as necessary to administer and enforce the provisions of this act.

History: L. 1989, ch. 234, § 5; July 1.

75-2746. Registry. (a) Each unmarked burial site located in this state which becomes known to the board shall be entered on the registry established under K.S.A. 75-2745. The board shall identify, to the extent possible, the cultural or personal identity of the deceased person or persons interred at the site and shall notify each landowner on whose property a registered unmarked burial site is located.

(b) The registry of unmarked burial sites shall be confidential and shall not be open to inspection except as provided by rules and regulations of the board consistent with the purposes of this act.

History: L. 1989, ch. 234, § 6; July 1.

75-2747. Permits. (a) The board shall establish by rules and regulations a system of permits for the excavation, study, display and reinterment or disposition of human skeletal remains from unmarked burial sites and any goods interred with such remains.

(b) A permit to excavate human remains from an unmarked burial site and goods interred with such remains shall be issued only for scientific or educational purposes or for such other purposes, authorized by rules and regulations of the board, which the board determines are consistent with the purposes of this act. The permit shall provide for reinterment or disposition of the disinterred remains or goods by a specific date.

(c) A permit to study human skeletal remains from an unmarked burial site and goods interred with such remains shall be issued only for study by a bona fide research, medical or educational institution for research, medical or educational purposes, as determined in accordance with rules and regulations of the board. The permit shall be valid for a period of one year. On a showing of need, the board may extend such period for additional periods of six months. The permit shall provide for reinterment or disposition of the disinterred remains or goods by a specific date.

(d) A permit to display human skeletal remains from an unmarked burial site and goods interred with such remains shall be issued only for display by a bona fide research, medical or educational institution for research, medical or educational purposes, as determined in accordance with rules and regulations of the board.

(e) Permits issued by the board shall be subject to such terms, conditions and procedures as prescribed by the board. Such conditions shall include a condition that permittees pay all costs incurred, including costs of excavation, study and disposition. If human skeletal remains are reasonably identified with direct kin or descent groups such as native American Indian tribes, the board shall consult with such groups prior to issuing a permit for the excavation, study, display or reinterment or disposition of such remains or goods interred with such remains.

(f) The board may deny, suspend or revoke any permit, in accordance with the Kansas administrative procedure act, upon a finding that the applicant or permittee has violated any provision of this act or any term, condition or procedure of a permit issued by the board.

(g) The board shall fix by rules and regulations an application fee which shall accompany each application for a permit provided for by this section. For that purpose, the board may establish classes of permits and fix a different application fee for each class. No such application fee shall exceed \$50.

History: L. 1989, ch. 234, § 7; July 1.

75-2748. Prohibited acts; criminal and civil penalties. (a) On and after January 1, 1990, no person shall, unless such person holds a permit issued by the board to do so or is exempt pursuant to subsection (b):

- (1) Willfully disturb an unmarked burial site;
- (2) knowingly possess human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains;
- (3) display human skeletal remains known to have been from an unmarked burial site, or goods interred with

such remains;

(4) sell, trade or give away human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains; or

(5) throw away or discard human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains.

(b) Subsection (a)(2) shall not apply to possession of human skeletal remains or burial goods by the state historical society or institutions of higher education represented on the Kansas antiquities commission pursuant to K.S.A. 74-5402 and amendments thereto, but the board, in consultation with interested parties, shall review the collections of such society and institutions and report to the legislature on or before January 13, 1992, any recommendations it has concerning human skeletal remains and burial goods which are part of such collections and are from unmarked burial sites. Subsections (a)(1) through (5) shall not apply to:

(1) Disinterment, possession, display, transfer, reinterment or disposition of human skeletal remains, or goods interred with such remains, which are determined by a coroner to be remains described by K.S.A. 22a-231 and amendments thereto; and

(2) private collections of burial goods acquired prior to January 1, 1990.

(c) Violation of this section is a crime punishable:

(1) Upon conviction of a first offense, by a fine of not more than \$10,000, if the commercial and archeological value of the remains and goods involved and all costs related to their restoration and repair is \$5,000 or less;

(2) upon conviction of a first offense, by a fine of not more than \$20,000, if the commercial and archeological value of the remains and goods involved and all costs related to their restoration and repair is more than \$5,000; and

(3) upon conviction of the second or a subsequent offense, by a fine of not more than \$100,000.

(d) In addition to or in lieu of any penalty imposed pursuant to subsection (c), the board, upon a finding that a person has violated any provision of this section or any term of a permit issued under this act, may impose on such person a civil fine of not more than \$2,000 for each violation. Imposition of any such fine shall be only upon notice and a hearing conducted in accordance with the Kansas administrative procedure act and shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1989, ch. 234, § 8; July 1.

75-2749. Notice of violations or discovery of remains; penalties. (a) Any person who knows or has reason to know that a violation of K.S.A. 75-2748, and amendments thereto, is being or has been committed must immediately notify the law enforcement agency of the jurisdiction where the violation occurred. A law enforcement agency shall notify the state historical society of any violation of K.S.A. 75-2748, and amendments thereto, which becomes known to the law enforcement agency.

(b) Any person who discovers human skeletal remains immediately shall notify the law enforcement agency of the jurisdiction where the remains were found. Upon receipt of such notice, the law enforcement agency immediately shall notify the district coroner or deputy district coroner. If the coroner determines that the human skeletal remains are not of evidentiary or forensic interest then the coroner shall notify the state historical society.

(c) Failure to give notice as required by subsection (a) or (b) is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

(d) Upon notification pursuant to this section or K.S.A. 22a-232, and amendments thereto, the state historical society shall assume jurisdiction over the human skeletal remains, and any goods interred with such remains. The state historical society shall carry out society actions in as expeditious a manner as possible, with particular consideration given to circumstances such as construction sites, agricultural interests and kin or descent groups. After disinterment, the remains and goods may be under the control of the state historical society for purposes of study for a period of one year. On a showing of need, the board may extend such period for additional periods of six months. After any period of study authorized by this subsection, disposition or reinterment of the remains and goods shall be under the direction of the board.

History: L. 1989, ch. 234, § 9; L. 1993, ch. 214, § 14; July 1.

75-2750. Inspection warrant. The chairperson of the board, or a person designated by the chairperson, may apply to a judge of the district court of a county for an inspection warrant to inspect premises located in such county for the purpose of determining compliance with this act or with the terms of a permit issued under this act. The application shall be a sworn written statement, signed by the applicant, and shall include a description of the premises to be inspected, the reasons for the inspection and a statement that entry for the purpose of such inspection has been refused. The judge shall issue the warrant only if the judge determines from the application that there is probable cause to believe that the inspection is required to enforce the provisions of this act, that the inspection is within the lawful limits of the applicant's power to inspect and that the applicant is authorized to conduct the inspection. The warrant shall direct the applicant to inspect the premises described in the application and, if requested by the applicant, shall direct a law enforcement officer of the jurisdiction to accompany the applicant during the inspection.

History: L. 1989, ch. 234, § 10; July 1.

75-2751. Duties of attorney general. Upon request of the board, the attorney general shall aid in any investigation, inspection, hearing or trial pursuant to the provisions of this act and shall institute and prosecute all necessary actions or proceedings for the enforcement of this act. The attorney general shall report to or confer with the board regarding any such request within 30 days after receipt of the request.

History: L. 1989, ch. 234, § 11; July 1.

75-2752. Civil enforcement of act. In addition to or in lieu of any penalty imposed pursuant to K.S.A. 75-2748 or 75-2749, any person who violates any provision of K.S.A. 75-2748 or 75-2749 may be liable for injunctive relief, damages and attorney fees or other appropriate relief to any person with a kinship, cultural, tribal, research, scientific or educational interest in preserving the affected burial site, skeletal remains or burial goods.

History: L. 1989, ch. 234, § 12; July 1.

75-2753. Cemetery for reburial of remains. The secretary of the state historical society shall establish, with the approval of the board, a cemetery on existing state lands for the reinterment of human skeletal remains from unmarked burial sites in this state, and goods interred with such remains. Such cemetery shall not be open to the public.

History: L. 1989, ch. 234, § 13; July 1.

75-2754. Severability. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

History: L. 1989, ch. 234, § 14; July 1.